Milan Auto Sdn Bhd v Wong Seh Yen

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02–154 OF 1994
ANUAR CJ (MALAYA), MOHD AZMI AND WAN YAHYA FCJJ
10 NOVEMBER 1995

Labour Law *— Industrial Court — Award — Award based on employer's failure to hold domestic inquiry — Question of whether dismissal was with just cause or excuse not considered — Whether court acting in excess of jurisdiction — Whether court committed jurisdictional error — Employment Act 1955 s 14 — Industrial Relations Act 1967 s 20*

Labour Law *— Industrial Court — Function — Reference under s 20 — Whether must determine if misconduct established and whether constitutes just cause for dismissal — Whether failure to do so a jurisdictional error — Industrial Relations Act 1967 s 20*

Administrative Law *— Remedies — Certiorari — Application to quash award of Industrial Court — Award based on employer's failure to hold domestic inquiry — Whether court had committed jurisdictional error in not determining if misconduct constituted just cause for dismissal in any event — Industrial Relations Act 1967 s 20*

The respondent was a mechanic working for the appellant with a monthly salary of RM600. On 31 March 1990, the appellant dismissed the respondent from work, alleging that he was indisciplined, unproductive and arrogant, as he had on several occasions slept during office hours, taken leave without approval, and refused to see the operations manager when requested to do so. The Minister made a reference to the Industrial Court under s 20(3) of the Industrial Relations Act 1967 ('the Act'), following representation by the respondent that he had been dismissed without just cause or excuse by the appellant. The Industrial Court decided in favour of the respondent, purely on the ground that the appellant's breach of the statutory requirement of 'due inquiry' before dismissal under s 14(1) of the Employment Act 1955, and the failure to comply with the principle of natural justice by failing to hold an inquiry before dismissing the respondent, were sufficient to constitute a dismissal without just cause or excuse, and it was unnecessary to determine whether the alleged misconduct, if established, constituted a just cause or excuse for dismissal. The appellant's application to the High Court to quash the award was dismissed. The appellant appealed.

Held, allowing the appeal:

(1) The function of the Industrial Court in a reference under s 20 of the Act is twofold, first, to determine whether the alleged misconduct has been established, and secondly whether the proven misconduct constitutes just cause or excuse for the dismissal. Failure to determine these issues on the merits would be a jurisdictional error which would merit interference by certiorari by the High Court.

(2) The Industrial Court would also be acting in excess of jurisdiction if it changed the scope of the reference by substituting its own reason in place of the reason relied upon by the employer for the dismissal. The breach in natural justice in not holding a statutory or contractual domestic inquiry was 'curable' by an inquiry held by the Industrial Court itself.

(3) The principle of curability is not limited to a certain category of workmen depending on their salaries. In the absence of clear words by Parliament, neither the requirement of due inquiry before dismissal in s 14(1) of the Employment Act 1955 for employees whose earning did not exceed RM1,250 per month, nor the subsequent amending Acts were intended to alter this policy of the law. Further, there would be no basis in law that the breach in natural justice could only be cured, if the workman earned more than RM1,250 per month.

(4) The Industrial Court could not therefore excuse itself from determining the two issues required to be determined in dismissal cases under a s 20 reference. In the present appeal, the Industrial Court had committed jurisdictional error in omitting to carry out its basic functions. The High Court judge, in dismissing the appellant's application, fell into similar error.

[Bahasa Malaysia summary

Penentang merupakan seorang mekanik yang bekerja untuk perayu dengan gaji bulanan sejumlah RM600. Pada 31 Mac 1990, perayu telah memecat penentang daripada kerjanya dengan mengata bahawa beliau tidak berdisiplin, tidak produktif, dan angkuh, kerana beliau telah beberapa kali tidur semasa waktu pejabat, mengambil cuti tanpa kebenaran, dan enggan berjumpa dengan pengurus operasi apabila diminta berbuat demikian. Menteri telah membuat suatu rujukan kepada Mahkamah Perusahaan di bawah s 20(3) Akta Perhubungan Perusahaan 1967 ('Akta itu'), ekoran representasi penentang bahawa beliau telah dipecat oleh perayu tanpa sebab atau alasan yang adil. Mahkamah Perusahaan membuat keputusan yang memihak kepada penentang, hanya atas alasan bahawa perlanggaran syarat statutori 'siasatan yang sewajarnya' sebelum pemecatan di bawah s 14(1) Akta Pekerjaan 1955 oleh perayu, dan kegagalannya untuk mematuhi rukun keadilan asasi dengan gagal mengadakan suatu siasatan sebelum memecat penentang, mencukupi untuk membentuk suatu pemecatan tanpa sebab atau alasan yang adil, dan adalah tidak perlu menentukan sama ada salah laku yang dikatakan itu, jika terbukti, akan merupakan sebab atau alasan yang adil untuk pemecatan. Permohonan perayu kepada Mahkamah Tinggi untuk membatalkan award Mahkamah Perusahaan telah ditolak. Perayu membuat rayuan.

Diputuskan, membenarkan rayuan:

(1) Mahkamah Perusahaan mempunyai dua fungsi di dalam suatu rujukan di bawah s 20 Akta itu, pertama, untuk menentukan sama ada salah laku yang dikatakan itu telah dibuktikan, dan keduanya, sama ada salah laku yang telah dibuktikan itu merupakan sebab atau alasan yang adil untuk pemecatan. Kegagalan untuk menentukan isu-isu ini atas merit mereka merupakan kesilapan bidang kuasa yang mewajarkan campur tangan Mahkamah Tinggi dengan certiorari.

(2) Mahkamah Perusahaan juga bertindak melebihi bidang kuasa jika ia menukarkan skop rujukan dengan menggantikan sebabnya sendiri untuk sebab yang majikan bergantung untuk pemecatan. Pelanggaran keadilan asasi kerana tidak mengadakan siasatan domestik statutori atau kontrak boleh 'diatasi' oleh suatu siasatan yang diadakan oleh Mahkamah Perusahaan sendiri.

(3) Rukun boleh diatasi itu tidak patut dihadkan kepada kategori pekerja yang tertentu, bergantung kepada gaji mereka. Tanpa perkataan yang jelas oleh Parlimen, syarat siasatan sewajarnya sebelum pemecatan di dalam s 14(1) Akta Pekerjaan 1955 untuk pekerja yang memperolehi pendapatan yang tidak melebihi RM1,250 sebulan, mahupun Akta pindaan yang seterusnya, adalah tidak bertujuan untuk mengubah dasar undang-undang ini. Lagipun, tidak terdapat asas dalam undang-undang bahawa pelanggaran keadilan asasi hanya dapat diatasi jika seseorang pekerja itu memperolehi lebih daripada RM1,250 sebulan.

(4) Maka, Mahkamah Perusahaan tidak boleh mengecualikan sendiri daripada menentukan dua isu yang memerlukan penentuan di dalam kes pemecatan di bawah suatu rujukan di bawah s 20. Di dalam kes ini, Mahkamah Perusahaan telah melakukan kesilapan bidang kuasa kerana ia tidak melakukan fungsi asasnya. Hakim Mahkamah Tinggi, dalam menolak permohonan perayu, telah melakukan kesilapan yang sama.]

Notes

For cases on the Industrial Court, see 8 *Mallal's Digest* (4th Ed) paras 695–740; [1989] Mallal's Digest 951; [1990] Mallal's Digest 725; [1991] Mallal's Digest 1283–1289; [1992] Mallal's Digest 1161–1166; [1993] Mallal's Digest 932–933; [1994] Mallal's Digest 1522–1530.

Cases referred to

Calvin v Carr & Ors [1980] AC 574; [1979] 2 All ER 440 (folld)

Dreamland Corp (M) Sdn Bhd v Choong Chin Sooi & Anor [1988] 1 MLJ 111 (distd)

Surinder Singh Kanda v Government of the Federation of Malaya [1962] MLJ 169 (distd)

Sykt Great Eastern Life Assurance Bhd v Kesatuan Sekerja Kebangsaan Pekerja-Pekerja Perdagangan (Industrial Court Award No 21/69) (refd)

Wong Yuen Hock v Hong Leong Assurance Sdn Bhd [1995] 2 MLJ 753 (folld)
Workmen of the Motipur Sugar Factory Pte Ltd v Motipur Sugar Factory Pte Ltd AIR 1965 SC 1803 (folld)

Legislation referred to

Employment Act 1955 s 14(1)
Industrial Relations Act 1967 s 20

Appeal from: Originating Motion No R1–25–60–92 (High Court, Kuala Lumpur)

Balbinder Kaur (*Chua Bros, Azzat & Izzat*) for the appellant.
R Sivarasa (*Sivarasa & Associates*) for the respondent.

Mohamed Azmi FCJ (delivering the grounds of judgment of the court): We allowed this appeal on 19 June 1995, and we now give our reasons.

The appeal of Milan Auto Sdn Bhd was against the decision of the High Court dated 22 February 1994, in dismissing the appellant's application to quash the award of the Industrial Court No 116 of 1992 pursuant to a reference made by the Minister of Human Resources under s 20(3) of the Industrial Relations Act 1967, following representation by Encik Wong Seh Yen (the respondent/claimant), a mechanic with a monthly salary of RM600 who considered himself to have been dismissed without just cause or excuse by the appellant on 31 March 1990.

The grounds for the claimant's dismissal, as contained in the company's letter of 31 March 1990 reads:

> Mr Wong Seh Yen
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> Re: Termination of services
>
> We refer to the above captioned subject and regret to inform you that your service is hereby terminated immediately.
>
> We have been informed by your immediate superior, service manager Mr Yew Sin Nam, that your attitude towards the company's working policy is very unbecoming. On three occasions you have been caught sleeping during office hours by the parts director and operations manager. You have taken leave without approval from your immediate superior. When you were asked to see the management with regard to the mentioned, you were very arrogant and refused to see the operations manager.
>
> After numerous warnings were given to you both in writing and verbally, you continued to be indisciplined, unproductive, arrogant and refuse to work properly when instructions were given to you by your department manager.
>
> In view of the aforesaid, we have no choice but to terminate your service with immediate effect. Please note that your second-half month salary will be withheld for income tax clearance and a cessation form will be given to you. You are also to return the overall clothing which was supplied to you by the company and to be handed to your department manager. Failing to do so, we will deduct the amount involved from your salary.
>
> Yours faithfully

A Milan Auto (M) Sdn Bhd
—Sgd—
Hamid bin Sulaiman
Executive director

There were thus, three main incidents advanced by Milan Auto for the B alleged indiscipline, unproductivity and arrogance on the part of the claimant which, according to the company, merited the dismissal:

(i) Wong was caught sleeping on three occasions during office hours;

(ii) he took leave without approval; and

C (iii) on each of the above incidents, he refused to see the operations manager when requested to do so.

In its award, the Industrial Court merely took note of the alleged grounds for the dismissal without making any decision on the merits. Relying on an earlier award No 21/69 in the case of *Sykt Great Eastern Life Assurance Bhd* D *v Kesatuan Sekerja Kebangsaan Pekerja-Pekerja Perdagangan*, it in effect concluded that it was unnecessary for the court to examine the evidence and determine whether the company's allegations against the claimant were in fact established, or to consider whether such misconduct if established constituted 'a just cause or excuse' for the dismissal, and that it was sufficient to dispose of the dispute purely on account of the company's E failure to comply not only with the principle of natural justice but also with the statutory requirement of 'due inquiry' before dismissal under s 14(1) of the Employment Act 1955. This is clearly reflected at pp 4–7 of the award, which for the sake of convenience is now reproduced:

> F Before we examine the evidence whether the reasons for dismissal as given in CL2 have been made out, it would be pertinent to examine first as to the requirement of the law before a workman can be dismissed. It has been stated in Award No 21/69 in the case of *Sykt Great Eastern Life Assurance Bhd v Kesatuan Sekerja Kebangsaan Pekerja-Pekerja Perdagangan*:
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> > G 'Before the service of an employee can be terminated on the grounds that he has committed some misconduct which deserves the punishment of dismissal, he should be adequately informed of the accusation made against him and he should be given a fair opportunity to correct or contradict them. One of the principles of natural justice is that no one shall be condemned unheard, and in the words of Lord Denning in *Surinder Singh Kanda v Federation of Malaya* [1962] MLJ 169, if the H right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused person to know the case which is made against him. The accused must be given sufficient opportunity not only to know the case against him but also to answer it.'
>
> Section 14(1) of the Employment Act 1955 says:
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> I 'An employer may, on the grounds of misconduct inconsistent with fulfilment of the express or implied conditions of his service, after due inquiry —
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> (a) dismiss without notice the employee;
>
> (b) downgrade the employee; or
>
> (c) impose any other lesser punishment as he deems just and fit.'

In other words an employee can only be dismissed without notice for misconduct after due inquiry. As such for an 'employee' as defined under s 2 of the Act, an inquiry is a must before he can be dismissed.

The evidence shows that there was no inquiry held as required under s 14(1) of the Employment Act 1955. There is also no evidence that the claimant was asked to give his explanation as to the alleged misconduct. What happened was that on 28 February 1990, the claimant was alleged to have been found sleeping in the mechanics' rest room just after his lunch break. On 1 March 1990, COW4, the service manager wrote a warning letter, CO3, to the claimant and this was copied to the executive director, COW1. One month later that is, on 31 March 1990, the company issued CL2 — terminating the claimant's services to take effect immediately.

In this case the company has failed not only to follow the rules of natural justice that is, to afford an opportunity for claimant to be heard but also failed to comply with the statutory requirement as stated under s 14(1) of the Employment Act 1955.

To my mind failure to comply with s 14(1) of the Employment Act 1955 cannot be saved by the principle in *Workmen of the Motipur Sugar Factory Pte Ltd v Motipur Sugar Factory Pte Ltd* AIR 1965 SC 1803 as adopted by the Supreme Court in *Dreamland Corp (M) Sdn Bhd v Chong Chin Sooi & Anor* [1988] 1 MLJ 111 which states:

> 'Where an employer has failed to make an inquiry before dismissing or discharging a workman it is open to him to justify his action before the tribunal by leading all relevant evidence before it. The entire matter would be open before the tribunal. It will have jurisdiction not only to go into the limited questions open to a tribunal where domestic inquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. The important effect of omission to hold an enquiry is merely that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out.'

This is because in the *Dreamland* case it involved a claimant whose salary per month was RM2,400 and therefore not an 'employee' within the meaning of the Employment Act 1955. Therefore the principle in the *Dreamland* case cannot be applicable in all cases as it cannot override the statutory requirement of s 14(1) of the Employment Act 1955.

As such it is the finding of this court that the dismissal is invalid and therefore for the purpose of s 20 of the Industrial Relations Act 1967, the dismissal is without just cause or excuse.

In the context of a s 20 reference, we disagreed with the above argument. For one thing, *Surinder Singh Kanda v Federation of Malaya* [1962] MLJ 169 is not a dispute under the Industrial Relations Act 1967, and for another, the case of *Sykt Great Eastern Life Assurance Bhd* (Industrial Court Award No 21/69) is not a binding authority. As pointed out by this court recently in *Wong Yuen Hock v Hong Leong Assurance Sdn Bhd* [1995] 2 MLJ 753, the function of the Industrial Court in dismissal cases on a reference under s 20 is twofold, first, to determine whether the misconduct complained of by the employer has been established, and secondly, whether the proven misconduct constitutes just cause or excuse for the dismissal.

Failure to determine these issues on the merits would be a jurisdictional error which would merit interference by certiorari by the High Court. Further, the Industrial Court would be acting in excess of jurisdiction if it changed the scope of the reference by substituting its own reason, that is to say, a reason not relied upon by the employer for the dismissal. For the reasons given in *Hong Leong Assurance*, we were of the view that the initial defect in natural justice in not holding a statutory or contractual domestic inquiry was 'curable' by the inquiry held by the Industrial Court itself on the principle laid down in *Workmen of the Motipur Sugar Factory Pte Ltd v Motipur Sugar Factory Pte Ltd* AIR 1965 SC 1803; *Calvin v Carr & Ors* [1980] AC 574; [1979] 2 All ER 440; and *Dreamland Corp (M) Sdn Bhd v Choong Chin Sooi & Anor* [1988] 1 MLJ 111.

We had considered the distinction sought to be made by the Industrial Court between *Dreamland* and the present case. It was brought in argument that the claimant in this case was an 'employee' under s 14(1) of the Employment Act 1955 as he was employed as a mechanic at a monthly salary of RM600 as compared to the salary of RM2,400 per month earned by the manager in *Dreamland*. It was thus argued that unlike the present case, 'due inquiry' was not required in *Dreamland*. As pointed out in the *Hong Leong Assurance* case, the requirement of due inquiry before dismissal by s 14(1) of the Employment Act 1955 for employees whose earning did not exceed RM1,250 per month, could not by mere inference change the policy of the law in s 20 of the Industrial Relations Act 1967. Further, there would be no basis in law for holding that the defect in natural justice could only be cured if the workman earned more than RM1,250 per month. As such, we could not accept that the principle of curability should be limited only to a certain category of workmen depending on their salary. In the absence of clear words by Parliament, we held the view that none of the amending Acts to the Employment Act 1955, viz Act A91/1971, Act A360/1976 and Act A497/1980, was intended to alter the policy of the law under the Industrial Relations Act 1967. The Industrial Court could not therefore shy away or excuse itself from determining the two issues required to be determined in dismissal cases under a s 20 reference. In our view, the Industrial Court had in the present appeal committed jurisdictional error in omitting to carry out its basic functions.

The learned High Court judge, in dismissing the company's application fell into similar error as the Industrial Court in holding that the claimant was dismissed without just cause or excuse purely on the ground of breach of natural justice and failure to hold a statutory or contractual domestic inquiry, without assessing the evidence and determining the real issues required to be determined by the Minister's reference.

In the circumstances of this case, we quashed the award, and remitted the reference to another division of the Industrial Court to determine the dismissal dispute according to law. We also made no order as to costs.

Appeal allowed.

Reported by Prof Ahmad Ibrahim